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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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OCT 15 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matters of )  
 )  
Deployment of Wireline Services Offering )  
Advanced Telecommunications Capability )

CC Docket No. 98-147

**REPLY TO OPPOSITIONS TO PETITION OF BELL ATLANTIC FOR  
PARTIAL RECONSIDERATION OR, ALTERNATIVELY, FOR  
CLARIFICATION**

The parties that oppose Bell Atlantic's<sup>1</sup> reconsideration petition<sup>2</sup> distort the relief requested and use that distortion to impugn Bell Atlantic's motives in filing its petition. Contrary to the opponents' claims, Bell Atlantic is only asking the Commission to confirm that it did not intend to require incumbent local exchange carriers to provide a custom loop-conditioning service, if they do not provide that service for their own customers. It instead should clarify that incumbents are not required to meet every request by any competitor to condition any one of their tens of millions of local exchange lines for any advanced service that the competitor desires to offer. Requiring such a custom-conditioning service would be inconsistent with the Act and the *Iowa Utilities* decision.

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<sup>1</sup> Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

<sup>2</sup> Petition of Bell Atlantic for Partial Reconsideration or, Alternatively, for Clarification (filed Sept. 8, 1998).

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Insofar as interconnection agreements Bell Atlantic has entered into with competing local exchange carriers include provisions for loop conditioning, Bell Atlantic will, of course, fully meet those obligations. Moreover, to the extent that Bell Atlantic does provide loop conditioning services to its own customers, Bell Atlantic will provide similar services to other carriers on a non-discriminatory basis, even if those services exceed those specified in the interconnection agreements.

This is a far cry from what the competitors are demanding. They contend that they have an absolute right, regardless of their interconnection agreements, to select any single loop anywhere in Bell Atlantic's network and require Bell Atlantic to reconstruct it, by adding or removing facilities and equipment as needed, to allow that loop to support any one of a wide range of advanced services. The Act, however only requires incumbents to provide interconnection "that is at least equal in quality to that provided by the local exchange carrier to itself." 47 U.S.C. § 251(c)(2)(C). As the 8th Circuit found in a portion of its order that no party appealed to the Supreme Court (and is therefore final), that provision "does not mandate that incumbent LECs cater to every desire of every requesting carrier," and it does not require the incumbent to provide its competitors with access that is superior to what it provides itself, which is precisely what the competitors are now demanding. *See Iowa Util Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997).

The opponents also obfuscate the issue by claiming that conditioned loops are not "superior," because they are merely loops with certain encumbrances removed. However, those "encumbrances," which were added to enable the loops to carry voice traffic, make the loops inferior (or unusable) for certain data services. Rebuilding the

loops by removing those “encumbrances” is needed to make them “superior” (or usable at all) for data services but could make them unsuitable for voice services. And the opponents ignore the fact that the Commission has already found that such loop conditioning constitutes provision of “higher-quality” (*i.e.*, superior) access to network elements than the provision of unconditioned loops. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, ¶ 314 and n.680 (1996) (“Local Competition Order”). This issue, therefore, has been long-settled and the opponents should not be heard to claim otherwise.

Some parties make the bizarre claim that Bell Atlantic should have raised this issue by asking for reconsideration of the Local Competition Order in 1996 and is precluded from attacking it collaterally now. They ignore the fact that Bell Atlantic did raise this issue at the time. Rather than filing at the Commission for reconsideration, Bell Atlantic chose its remedy in its successful judicial appeal of the Local Competition Order. Having lost the issue on appeal, those parties now want the Commission to repeat the same mistake. Bell Atlantic’s request merely asks the Commission to clarify that it did not mean to contravene a binding decision by the court of appeals and is, therefore, timely.

Finally, the opponents dispute Bell Atlantic’s argument that section 706 of the Act contains independent forbearance authority and need not meet the strictures of section 10. As Bell Atlantic has repeatedly shown, Congress expressly provided that “the Commission shall not forbear from applying the requirements of section 251(c) or 271, under subsection (a) of this section” until it determines that those requirements have been fully implemented.” 47 U.S.C. § 160(d) (emphasis added). On its face, that language

affects the Commission's exercise of forbearance authority under no section other than 251(c) or 271, such as under section 706.

The Commission's order fails to address this express language of section 10(d). It fails to explain how its conclusion that the requirements of 10(a) apply to section 706 can be squared with the express statutory terms. Accordingly, on reconsideration, the Commission should acknowledge that Congress intended to give the Commission broader forbearance power than is specified in section 10(a) in order to implement the overriding Congressional policy to encourage the deployment of advanced services.

Accordingly, the Commission should grant Bell Atlantic's petition.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Lawrence W. Katz", is written over a horizontal line.

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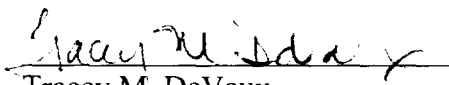
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October 15, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 15<sup>th</sup> day of October, 1998 a copy of the foregoing "Reply to Oppositions to Petition of Bell Atlantic for Partial Reconsideration or, Alternatively, for Clarification" was sent by first class mail, postage prepaid, to the parties on the attached list.

  
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